

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

PAUL RICHARD ESTRELLA

74 Charity Road  
Havilah, CA 93518

Registered Nurse License No. 513326

Respondent.

Case No. 2012-307

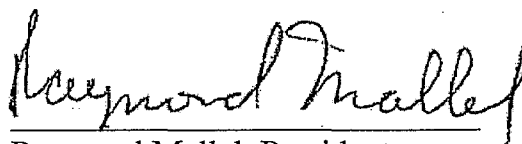
OAH No. 2012010866

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on December 7, 2012.

IT IS SO ORDERED this 9th day of November, 2012.



Raymond Mallel, President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

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**PROPOSED DECISION**

Michael R. Diliberto, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 28, 2012, in Los Angeles, California

Linda L. Sun, Deputy Attorney General, and Christina Catapang, who appeared pursuant to the Rules Governing the Practical Training of Law Students, represented Louise R. Bailey, M.Ed., RN (complainant), Board of Registered Nursing (Board), Department of Consumer Affairs.

Paul Richard Estrella (respondent) appeared at the hearing and represented himself.

Oral and documentary evidence was received and the matter was argued and submitted for decision on June 28, 2012. The administrative law judge makes his factual findings, legal conclusions and orders as follows.

**FACTUAL FINDINGS**

*Jurisdiction*

1. Complainant filed the accusation in her official capacity. Respondent timely filed his request for hearing on the accusation, and this hearing ensued.
2. On or about July 27, 1995, the Board issued Registered Nurse License Registration Number 513326 to respondent, which expired on July 31, 2011.<sup>1</sup>

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<sup>1</sup> Business and Professions Code section 2764 states in relevant part: "The lapsing . . . of a license . . . shall not deprive the board of jurisdiction to proceed with any . . . disciplinary proceeding against such license, or to render a decision suspending or revoking such license."

### *Criminal Conviction*

3. On February 15, 2007, in the Superior Court of the State of California, County of Ventura, Case No. 2006039618MA, respondent was convicted, after his plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (b) (driving with equal to or greater than 0.08 percent blood alcohol), a misdemeanor. The court pronounced him guilty in accepting his nolo contendere plea. The court suspended imposition of sentence and placed him on formal probation for thirty-six months (which was later converted from formal probation to conditional revocable release); ordered him to serve five days in the Ventura County jail less credit for one day served; attend the drunk driver program (first conviction program) for ninety days; perform four days of community service for the California Department of Transportation (Caltrans); obey all city, county, state and federal laws; refrain from operating a motor vehicle while under the influence of drugs or alcohol; and pay fines and restitution of \$1,801.00.

4. The facts and circumstances underlying the conviction are that on October 17, 2006, at approximately 3:55 a.m., Respondent lost control of his vehicle while returning home from a friend's house, resulting in a single vehicle rollover accident. According to police at the scene of the accident, respondent appeared to be under the influence of alcohol: he had red and watery eyes, slow and slurred speech, he smelled as if he had consumed alcohol, and he was unable to maintain his balance during sobriety tests. When police asked respondent whether he had consumed an alcoholic beverage that night, he denied he had been drinking. The police observed that respondent suffered minor injuries and he could not remember anything about the accident. He complained to the police about neck pain and stated he was in too much pain to complete the sobriety tests. Respondent was arrested for driving under the influence of alcohol, later confirmed when test results showed he had a blood alcohol concentration of 0.14 percent, which was in excess of the legal limit.

### *Additional Cause for Discipline*

5. On September 6, 2007, respondent tested positive for alcohol intoxication while on duty as a registered nurse at St. Vincent Medical Center, Chatsworth, California (St. Vincent). At hearing, respondent admitted that he consumed a large quantity of alcoholic beverages that day, starting at 7:00 or 8:00 a.m. before he drove to the hospital to report for duty at noon. His unusual behavior was noted by his colleagues, and at the request of Gail Watts, the interim director of human resources, respondent consented to a drug and alcohol test performed at the hospital laboratory. Respondent tested positive for alcohol intoxication and he was later fired.

6. Ms. Watts has been the human resources director at St. Vincent since mid-2007. On September 6, 2007, she was still the interim director of human resources at St. Vincent. As the director of human resources, she has performed hundreds of investigations concerning

alleged violations of hospital policies and protocols by hospital employees. On September 6, 2007, a nurse informed her that respondent smelled of alcoholic beverages and appeared to be under the influence of drugs or alcohol. Watts investigated the allegation by watching respondent perform his duties in the emergency room during the day shift. She observed that respondent wobbled and seemed unsteady on his feet. Based on her experience, she concluded that Respondent was under the influence of drugs or alcohol and that his ability to competently perform his job was impaired. Pursuant to the St. Vincent Human Resources Policy and Procedures Manual for Alcohol and Drug Misuse (Revised July 2009), which Watts drafted, she obtained respondent's consent to submit to drug and alcohol testing to determine if he was under the influence that day. He also agreed to release the test results to the hospital. Several months later, respondent returned to St. Vincent to retrieve his registered nurse certificate. Watts observed that he appeared healthy and clean-cut. Respondent told Watts that after he was fired from St. Vincent, he checked himself into an alcohol rehabilitation program in Tarzana, California.

#### *Rehabilitation and Other Factors*

7. Respondent completed his community service and his court-ordered drinking driver program. He paid all court-ordered fines and restitution. Respondent violated the terms of his probation when he drove to and from work under the influence of alcohol on September 6, 2007, as he was ordered to obey all laws and to refrain from operating a motor vehicle while under the influence. Respondent testified at hearing that he "drank heavy" in the morning before driving to work that day, and he drove home from work after testing positive for alcohol intoxication. His conditional revocable release ended as of February 15, 2010. Although respondent did not bring documentation to the hearing to verify completion of his probation terms, respondent's testimony on this subject was credible.

8. Respondent is 48 years old. He was married for 24 years, and he and his wife have been separated for three years; they have three children. He joined the United States Army in 1988 and served in active duty for less than one year. He served in the National Guard from 1989 to 1990. Beginning in 1991, he served as a flight nurse in the United States Air Force reserve where he worked on military flights and in military hospitals until he retired in 2011 with the rank of major. From 2002 to 2006, he was deployed overseas to locations such as Afghanistan and Iraq for up to six months at a time. Between 1989 and 2009, he worked part-time in a furniture business owned by his wife and her parents. He obtained an associate of arts degree in nursing from Pierce College in Woodland Hills, California in 1995. After his employment ended at St. Vincent, he worked as a nurse at West Hills Hospital for six months from December 2007 to May 2008. As a result of his alcoholism, he resigned from West Hills Hospital because he was unsure of himself and did not want to cause any problems that could hurt the patients. Since 2011 he has worked sporadically as a day laborer in construction and brush clearing. He has lived in a spare room at his parents' home in Havilah, near Bakersfield, California.

9. Respondent has attended St. Jude's church for the past three months and attended different churches the year before. The frequency of his church attendance was not specified. He recently joined the Kern Valley Search and Rescue team, and is still in training to learn how to rescue people from water-related accidents that occur on the Kern River. Less than one month ago, he joined the Kern River Valley Fire Safe Council which promotes fire safety for homes and structures. In late September 2007, respondent began attending alcoholics anonymous (AA) meetings two to three times per week, which he continues to attend. He usually serves as secretary for the meetings and also serves as treasurer and is responsible for collecting monies that are used to pay for the meeting room and other items such as food and brochures. He associates with other mentors and colleagues in the program, and has been sober since June 27, 2009. He continues to attend AA meetings to maintain his sobriety, and because he knows that drinking alcohol could eventually lead to his death. The AA meetings have taught him that his drinking could cause him to lose everything that he has worked to achieve. He has learned to value his license and the meaningful work it allows him to pursue. After achieving sobriety, respondent reestablished communications with his family, and now sees his children once a month.

10. Respondent was a sincere and candid witness at hearing about the fact that he is an alcoholic and that his abuse of alcohol began while he served in the military as a way to cope with stress. From 2002 to 2007, respondent consumed alcohol "all day, every day." After he was fired from St. Vincent, he voluntarily checked himself into an alcohol rehabilitation center for five days. He disclosed the fact that he resigned from employment at West Hills Hospital because he did not want his alcohol problem to harm any patients. He candidly admitted that he limits his exposure to friends and acquaintances who consume alcoholic beverages to make it easier to avoid any peer pressure to drink alcohol.

11. Respondent acknowledges that his abuse of alcohol caused him to lash out physically at his family in anger, and in the past, he was in denial about his drinking problem. He now sees the progress he has made since admitting he is an alcoholic. Respondent wants to resume his work as a nurse to help others, and he believes that his recovery from his troubled past can serve as hope and encouragement to others. The evidence shows that he was a licensee for 16 years with no record of any other complaints or disciplinary action involving his license. Except for his conviction, there was no evidence that respondent committed any other crime or that he has had any other encounters with the criminal justice system.

12. Reverend Alan Casas is respondent's mentor at the AA program he attends. Casas was ordained as a pastor in 2011 and has been the director of men's ministry at Restoration Word Ministries for 10 years. He has been an alcoholic since June 1988. Casas has known respondent for three years and believes he has been sober during that time, based on the fact that they speak daily, see each other regularly at AA meetings, and have mutual acquaintances in the recovering alcoholic community. Casas helps respondent understand the AA 12-step program and the teachings found in the AA Big Book of Alcoholism. Casas has

seen respondent transform from a fearful man to a man with more confidence who lives one day at a time.

13. John Good is an AA member who first met respondent at a meeting three years ago and continues to socialize with him three times per week. Good is not aware of respondent consuming alcoholic beverages during the three years he has known him, and believes that respondent can stay sober if he continues to participate in the AA program. Good stated that he would trust respondent to render any necessary nursing care to him.

14. The Board submitted certified prosecution costs reflecting the time spent on the case by the deputy attorney general of \$1,387.50. However, expert witness Deborah Toga did not testify at hearing, and it appears that her expert opinion "affidavit" was not served upon respondent ten or more days before the hearing pursuant to California Administrative Procedure Act, section 11514, subdivisions (a) and (b). Accordingly, after deducting the \$75.00 billed for Ms. Toga's expert fees, the administrative law judge finds enforcement costs of \$1,312.50 reasonable under the circumstances. Complainant did not submit any investigative costs attributable to this matter.

## LEGAL CONCLUSIONS

### *Applicable Law*

1. Business and Professions Code section 2750<sup>2</sup> provides that the Board may suspend or revoke a registered nurse's license for any reasons provided in sections 2750 through 2765.

2. The Board may suspend or revoke a license for "unprofessional conduct" (§ 2761, subd. (a)) and for conviction of any offense substantially related to the qualifications, functions, and duties of a licensee. (§§ 490, subd. (a) and 2761, subd. (f).) "Unprofessional conduct" includes use of alcoholic beverages "to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license." (§ 2762, subd. (b).) Being convicted of a crime involving consumption of alcoholic beverages is also "unprofessional conduct." (§ 2762, subd. (c).)

### *Substantial Relationship*

3. California Code of Regulations, title 16, section 1444<sup>3</sup> states, in pertinent part:

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<sup>2</sup> All further statutory references are to the Business and Professions Code.

<sup>3</sup> Further references to the California Code of Regulations are cited as "CCR."

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare.

#### *Board's Guidelines*

4. The Board's Recommended Guidelines for Disciplinary Orders and Conditions of Probation (Guidelines), effective May 24, 2003 (CCR section 1445.5), identify offenses for which the Board may take disciplinary action against a license, including violations of section 2761, subdivision (a) for unprofessional conduct; section 2761, subdivision (f) for a conviction substantially related to the qualifications, functions and duties of a registered nurse; section 2762, subdivision (b) for use of alcohol to the extent that it is dangerous to self or others; and section 2762, subdivision (c), for a conviction involving the consumption of alcohol. The Board recommends revocation as the minimum discipline for each of these violations. For the latter two violations, where there is documented evidence of an on-going rehabilitation program, the minimum discipline recommended is revocation stayed with a three-year probation for a first time offense. (Guidelines, pp. 4, 5, and 7.)

5. The Guidelines list criteria to be considered in determining rehabilitation for abuse of alcohol including: successful completion of an alcohol program for a minimum of six months duration. The treatment program may be a combined in-patient/out-patient and aftercare. The program must include at least the following elements: a chemical-free treatment philosophy; individual and/or group counseling; random, documented biological fluid screening; participation in nurse (or other professionals') support group(s); education about addictive disease; adherence to a 12-step recovery program philosophy, or equivalent; written documentation of participation in 12-step recovery groups, or equivalent. For licensees, employment in nursing for a minimum of six months with documentation (from the employer) that the employer was aware of the previous alcohol abuse problems. Documentation must substantiate that while employed, there was no evidence of continued alcohol use and that the respondent performed nursing functions in a safe and competent manner. (Guidelines, p. 14.)

#### *Cost Recovery*

6. Section 125.3 provides that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

#### *Cause for Discipline*

7. Cause exists to suspend or revoke respondent's license pursuant to sections 2761, subdivision (f) and 490, in conjunction with California Code of Regulations, title 16, section 1444, in that he was convicted of driving while under the influence of alcohol with a blood alcohol level of 0.14 percent, in excess of the legal limit. The crime is substantially related to the qualifications, functions and duties of a licensee. (Factual Findings 3 and 4 and Legal Conclusions 2 and 3.) Similarly, cause exists to suspend or revoke respondent's license under sections 2761, subdivision (a) and 2762, subdivision (c), for unprofessional conduct because respondent was convicted of a crime involving the consumption of alcoholic beverages. (Factual Findings 3 and 4 and Legal Conclusion 2.)

8. Cause exists to suspend or revoke respondent's license for engaging in unprofessional conduct pursuant to sections 2761, subdivision (a) and 2762, subdivision (b). Respondent used alcoholic beverages in a manner dangerous or injurious to himself, other people, and the public, and the use impaired his ability to conduct with safety to the public the practice authorized by his license. He consumed alcoholic beverages to an extent injurious to himself or the public when he was convicted of driving under the influence of alcohol. (Factual Findings 3 and 4 and Legal Conclusions 2 and 3.) He also reported to work at St. Vincent as a registered nurse under the influence of alcoholic beverages to an extent that impaired his ability to safely conduct his duties, as set forth in Factual Findings 5 and 6 and Legal Conclusion 3.

#### *Criteria for Rehabilitation*

9. CCR section 1445 provides that when considering whether to suspend or revoke a license, and evaluating the rehabilitation of a licensee, the Board will consider the following criteria: nature and severity of the act(s), offense(s), or crime(s) under consideration; actual or potential harm to the public; actual or potential harm to any patient; overall disciplinary record; overall criminal actions taken by any federal, state or local agency or court; prior warnings on record or prior remediation; number and/or variety of current violations; mitigation evidence; compliance with terms of sentence and/or court-ordered probation; time passed since the act(s) or offense(s) occurred; evidence of proceedings to dismiss a conviction pursuant to Penal Code section 1203.4; cooperation with the Board and other law enforcement or regulatory agencies; and other rehabilitation evidence.

10. Respondent has satisfied many of the Department's criteria for rehabilitation. The conduct which led to his conviction for driving under the influence occurred almost six years ago. The crime was not severe in the sense that it was a misdemeanor and respondent sustained minor injuries although his actions had the potential to harm the public. When he reported to work at St. Vincent while intoxicated he had the potential to harm patients and the public, because his ability to perform his work as a nurse was impaired. He also violated the law and the terms of his probation when he drove to and from work under the influence, which created a risk of harm to the public. Respondent admitted to driving to work that day after a morning of heavy drinking, and he drove home from work after testing positive for alcohol



intoxication. Respondent completed his conditional revocable release as of February 15, 2010, and fully complied with all of the conditions of probation. He attends a 12-step program, regularly participating in AA meetings each week, and he serves in a leadership role as the secretary and treasurer. As treasurer, he is responsible for collecting and allocating funds collected at the meetings, indicating a level of trust he has obtained from his peers. He has been sober since June 27, 2009, and has a support network of friends, including other recovering alcoholics with whom he spends time, all of which are strong factors of rehabilitation under the Guidelines. The AA meetings have helped him realize that his drinking could result in losing everything he has worked hard to achieve. He has learned to value his license and the meaningful work it allows him to pursue. He voluntarily attends AA meetings to maintain his sobriety, and because he knows that drinking alcohol would eventually kill him. Respondent is prepared to resume his work as a nurse to help others, and to use his recovery from his troubled past as hope and encouragement to others. (Factual Findings 3 and 7 through 9; Legal Conclusions 5 and 9.)

11. He volunteers a significant amount of time in his community, attends church, and is rebuilding his relationship with his children. He has no other criminal convictions and fully cooperated with the Board in its investigation of this matter. Even when he lost his job at St. Vincent because he was under the influence of alcohol at work, he was compliant in taking the blood alcohol test that definitively revealed he was impaired. After he was fired from St. Vincent, he voluntarily admitted himself into an alcohol treatment facility for five days. He also voluntarily resigned from West Hills Hospital because he realized his skills were impaired by alcohol. These actions show that he acknowledged his drinking problem and was diligent to protect the safety of others. Most importantly, respondent served his country in the armed forces and did tours of duty in Iraq and Afghanistan between 2002 and 2006. (Factual Findings 5 through 13.)

12. Respondent admits that he is an alcoholic, acknowledges his past mistakes, and was candid about the severity of his excessive consumption of alcoholic beverages. He is learning the AA 12-step program and applying it to his life, obtaining the tools necessary to deal with stress in a more positive way. Respondent has accepted full responsibility for his alcoholism, and admits that his alcohol abuse began as a way to relieve stress during his time in the military. He does not have a criminal history aside from his conviction. Taking into consideration the totality of the evidence, and the sufficient evidence of rehabilitation, it would not be against the public interest to issue a probationary license subject to appropriate terms and conditions. (Factual Findings 7 through 13; Legal Conclusions 5 and 9.)

13. Respondent has recovered from his troubled past to become a sober and productive citizen, and his rehabilitation demonstrates a capacity to practice safe nursing. However, the Board must be assured that respondent will continue to receive sobriety counseling, with the ability to monitor his attendance and progress. Accordingly, the probationary license shall include conditions requiring respondent to continue his sobriety

counseling, and allow the Board to monitor such counseling and progress until excused by the Board. Such conditions, among others, will protect the public safety by ensuring that respondent maintains his sobriety and is thus able to safely conduct the practice authorized by his license, and maintain the intent of the Board to assure safe nursing practices and rehabilitate rather than punish the respondent. (Guidelines, pp. 1 and 27.)

14. The Board is entitled to recover its reasonable costs of investigation and enforcement of this matter in the sum of \$1,312.50 pursuant to section 125.3. (Factual Finding 14 and Legal Conclusion 6.) It is not reasonable to require respondent to pay the entire amount at once based upon Factual Finding 8, and the Board may allow Respondent to make installment payments on a reasonable schedule based upon his ability to pay. (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45 (agencies must consider the licensee's ability to make payment when assessing costs under California Code of Regulations, title 16, section 317.5, a provision very similar to section 125.3).)

### ORDER

Registered Nurse License Number 513326 issued to respondent Paul Richard Estrella is revoked. However, the revocation is stayed and respondent is placed on probation for three years on the following conditions.

### SEVERABILITY CLAUSE

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

#### 1. OBEY ALL LAWS

Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within 72 hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process. If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions and may result in the filing of an accusation and/or petition to revoke probation.

#### 2. COMPLY WITH THE BOARD'S PROBATION PROGRAM

Respondent shall fully comply with the conditions of the probation program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension. Upon successful completion of probation, respondent's license shall be fully restored.

### 3. REPORT IN PERSON

Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

### 4. RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE

Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when he resides outside of California. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if he applies for or obtains a new nursing license during the term of probation.

### 5. SUBMIT WRITTEN REPORTS

Respondent, during the period of probation, shall submit or cause to be submitted such written reports, declarations and verification of actions under penalty of perjury, as required by the Board. These reports or declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives. Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he has a registered nurse license.

### 6. FUNCTION AS A REGISTERED NURSE

Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for six consecutive months or as determined by the Board. For purposes of compliance with the section "engage in the practice

of registered nursing” may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse. The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for six consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and the respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent’s probation period up to one year without further hearing in order to comply with this condition. During the one-year extension, all original conditions of probation shall apply.

## 7. EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS

Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board. Respondent shall provide a copy of this decision to his employer and immediate supervisors prior to commencement of any nursing or other health care related employment. In addition to the above, respondent shall notify the Board in writing within 72 hours after he obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within 72 hours after he is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

## 8. SUPERVISION

Respondent shall obtain prior approval from the Board regarding respondent’s level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care. Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent’s level of supervision and/or collaboration may include, but is not limited to the following: (a) Maximum: The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times; (b) Moderate: The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works; (c) Minimum: The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked; (d) Home Health Care: If respondent is approved to work in the

home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

#### 9. EMPLOYMENT LIMITATIONS

Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool. Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required. Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program. Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity. If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

#### 10. COMPLETE A NURSING COURSE(S)

Respondent, at his or her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of his probationary term. Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to respondent after photocopying them for its records.

#### 11. COST RECOVERY

Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$1312.50. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the

probation term. If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one-year extension, all original conditions of probation will apply.

## 12. VIOLATION OF PROBATION

If respondent violates the conditions of his probation, the Board, after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the respondent's license. If during the period of probation, an accusation or petition to revoke probation has been filed against the respondent's license or the attorney general's office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

## 13 LICENSE SURRENDER

During respondent's term of probation, if he ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation, respondent may surrender his license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

(1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or

(2) One year for a license surrendered for a mental or physical illness.

## 14. PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE

Respondent, at his expense, shall successfully complete during the probationary period

or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider respondent in violation of probation.

Based on Board recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

#### 15. ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS

Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood-altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within 14 days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances. The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

#### 16. SUBMIT TO TESTS AND SAMPLES

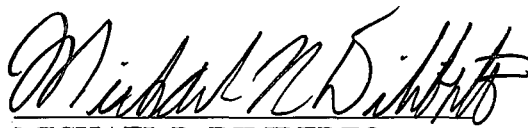
Respondent, at his expense, shall participate in random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The respondent is responsible for keeping the Board informed of

respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he is not available and ensure that reports are submitted directly by the testing agency immediately to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances. If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, the respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

DATED: August 1, 2012

A handwritten signature in black ink, appearing to read "Michael R. Diliberto".

MICHAEL R. DILIBERTO  
Administrative Law Judge  
Office of Administrative Hearings



# Exhibit A

Accusation Case No. 2012-307

1 KAMALA D. HARRIS  
Attorney General of California  
2 GLORIA A. BARRIOS  
Supervising Deputy Attorney General  
3 LINDA L. SUN  
Deputy Attorney General  
4 State Bar No. 207108  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-6375  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
7

8 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. **2012-307**

12 **PAUL RICHARD ESTRELLA**  
9912 Glade Avenue  
13 Chatsworth, CA 91311

**A C C U S A T I O N**

14 Registered Nurse License No. 513326

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
21 Consumer Affairs (Board).

22 2. On or about July 27, 1995, the Board issued Registered Nurse License No. 513326 to  
23 Paul Richard Estrella (Respondent). The Registered Nurse License was in full force and effect at  
24 all times relevant to the charges brought herein and expired on July 31, 2011.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following  
27 laws. All section references are to the Business and Professions Code (Code) unless otherwise  
28 indicated.

**STATUTORY PROVISIONS**

4. Code section 2764 provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b), the Board may renew an expired license at any time within eight (8) years after the expiration.

5. Code section 490 provides that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

6. Code section 2750 provides that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Code section 2761 states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

“(a) Unprofessional conduct, ....

....

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof. . . ."

8. Code section 2762 states, in pertinent part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

....

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to

1 himself or herself, any other person, or the public or to the extent that such use impairs his or her  
2 ability to conduct with safety to the public the practice authorized by his or her license.

3 "(c) Be convicted of a criminal offense involving the prescription, consumption, or  
4 self-administration of any of the substances described in subdivisions (a) and (b) of this section,  
5 or the possession of, or falsification of a record pertaining to, the substances described in  
6 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence  
7 thereof. . . ."

#### 8 **REGULATORY PROVISION**

9 9. California Code of Regulations, title 16, section 1444 states, in pertinent part:

10 "A conviction or act shall be considered to be substantially related to the qualifications,  
11 functions or duties of a registered nurse if to a substantial degree it evidences the present or  
12 potential unfitness of a registered nurse to practice in a manner consistent with the public health,  
13 safety, or welfare. . . ."

#### 14 **COST RECOVERY**

15 10. Code section 125.3 provides that the Board may request the administrative law judge  
16 to direct a licensee found to have committed a violation or violations of the licensing act to pay a  
17 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

#### 18 **FIRST CAUSE FOR DISCIPLINE**

##### 19 **(Conviction of a Substantially Related Crime)**

20 11. Respondent is subject to disciplinary action under Code sections 490 and 2761,  
21 subdivision (f), in conjunction with California Code of Regulations, title 16, section 1444, in that  
22 Respondent was convicted of a crime substantially related to the qualifications, functions or  
23 duties of a registered nurse, as follows:

24 a. On or about February 15, 2007, after pleading nolo contendere, Respondent was  
25 convicted of one misdemeanor count of violating Vehicle Code section 23152(b) [drive with an  
26 equal to or greater than 0.08% blood alcohol] in the criminal proceeding entitled *The People of*  
27 *the State of California v. Paul Richard Estrella* (Super. Ct. Ventura County, 2006,  
28 No. 2006039618MA). The Court sentenced Respondent to five (5) days in jail, placed him on a

1 work release program, 36 months probation, and ordered him to complete a Drinking Driver  
2 Program – First Conviction Program.

3 b. The circumstances underlying the conviction are that on or about October 17, 2006,  
4 Respondent drove his vehicle while intoxicated and was injured in a single vehicle roll-over  
5 traffic collision. He was tested with a blood alcohol concentration of 0.14/0.14%. Respondent  
6 was wearing scrubs on his way home from work.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Alcohol Related Conviction)**

9 12. Respondent is subject to disciplinary action under Code sections 2761, subdivision  
10 (a), and 2762, subdivision (c), on the grounds of unprofessional conduct, in that on or about  
11 February 15, 2007, Respondent sustained a criminal conviction involving the consumption of  
12 alcoholic beverages. Complainant refers to and by this reference incorporates the allegations set  
13 forth above in paragraph 11, inclusive, as though set forth fully.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Dangerous Use of Alcohol)**

16 13. Respondent is subject to disciplinary action under Code sections 2761, subdivision  
17 (a), and 2762, subdivision (b), in that Respondent used alcoholic beverages to an extent or in a  
18 manner dangerous or injurious to himself any other person, or the public or to the extent that such  
19 use impairs his ability to conduct with safety to the public the practice authorized by his license.  
20 The circumstances are as follows:

21 a. On or about October 17, 2006, Respondent drove his vehicle while intoxicated and  
22 was involved in a roll-over accident injuring himself. Complainant refers to and by this reference  
23 incorporates the allegations set forth above in paragraph 11 as though set forth fully.

24 b. On or about September 6, 2007, while on duty as a registered nurse at St. Vincent  
25 Medical Center, Chatsworth, California, Respondent exhibited unusual behavior and emitted an  
26 odor of alcohol. He was tested positive for alcohol above legal limits.

27 ///

28 ///

**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License No. 513326, issued to Paul Richard Estrella;

2. Ordering Paul Richard Estrella to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED: November 15, 2011

Louise R. Bailey  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
*Complainant*

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